No. 14577

In the United States Court of Appeals for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

F. W. WOOLWORTH CO., RESPONDENT

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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JURISDICTION

This case is before the Court upon the petition of the National Labor Relations Board pursuant to Section 10 (e) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Secs. 151, *et seq.*),[1] for the enforcement of its order issued against F. W. Woolworth Co., respondent herein, on July 20, 1954, following the usual proceedings under Section 10 of the Act, as amended. The Board's decision and order (R. 57–68)[1a] are reported in 109 NLRB No. 32. This Court

[1] The pertinent statutory provisions are reprinted *infra*, pp. 20–21.

[1a] References to portions of the printed record are designated "R." Wherever a semicolon appears, the references preceding the semicolon are to the Board's findings; those following the semicolon are to the supporting evidence.

has jurisdiction of the proceeding under Section 10 (e) of the Act, as amended, the unfair labor practices having occurred in San Bernardino, California, within this judicial circuit.[2]

STATEMENT OF THE CASE

I. The Board's findings of fact

This case presents the single issue whether respondent's refusal to reveal to its employees' statutory bargaining representative the names, hours, and wages of the employees covered by the collective bargaining contract violated Section 8 (a) (5) and (1) of the Act. The facts which are not in dispute may be summarized as follows:

The Retail Clerks Union, Local 1167, A. F. L., herein called the Union, is the exclusive collective bargaining representative of the retail store employees employed in respondent's store in San Bernardino, California. Its status as bargaining representative was established on March 22, 1951, by certification of the Board following a Board conducted election in which a majority of respondent's San Bernardino store employees designated the Union as their collective bargaining agent (R. 26).

One year later, on March 11, 1952, the respondent and the Union agreed upon their first collective bargaining contract to run for a 2-year term ending March 5, 1954 (R. 26; 8–15, 16). Section 5 of the contract established basic minimum wage rates for

[2] Respondent, a well known national chain of retail variety stores, does not deny that the operations involved herein affect commerce. No jurisdictional issue is presented (R. 25).

all employees. The establishment of the actual wage system, however, including the specification of the going wages, whether or not above the basic minimum, was reserved to respondent as among its "exclusive responsibilities" under the management prerogative clause found in Section 17. The contract contained no other reference or description of the actual wage rates except for a guarantee that "no employee shall suffer a reduction in wage rate on account of the signing of this agreement" (R. 9–10).

The contract further provided for wage reopening in mid-term, on March 7, 1953, for the express and limited purpose of making a "cost-of-living adjustment" in the basic minimum rate "at least" equal to the percent of change in the Bureau of Labor Statistics National Index, with the proviso that "a larger adjustment may be made by mutual agreement between the parties." These adjustments referred to the basic minimum rate only and did not affect the specific rate ranges or the rates actually paid (R. 26–27; 14–15). On the subject of hours, the agreement simply provided for daily and weekly overtime compensation geared to a 40-hour, 5½-day week (R. 9).

Contemporaneously with the execution of the contract on March 11, 1952, respondent, in response to the Union's request, furnished to it a list of all the employees covered by the contract. Thereupon the Union wrote to respondent, asking it to specify "the number of hours worked per week for each employee, also each employee's rate of pay the week ending prior to the effective date of the Agreement" "in

order to have a complete picture as of the date of the Agreement." Respondent did not reply to this letter (R. 28; 22, 81, 82).

There the matter rested until early in 1953 when the parties commenced negotiations for revision of the basic hourly rates to conform at least to the changes in the B. L. S. National Index as provided in Section 21 (b) of the 1952 Agreement (R. 27, 58; 17).

The B. L. S. Index formula for the minimum increase required a raise of at least 1.42 cents per hour or roughly 57 cents for a 40-hour week in the basic minimum rate. The Union asked for an increase of 5 cents per hour or $2 per week, and on March 13, respondent offered 2½ cents per hour or $1 per week (R. 27; 15–19, 82–87).

In the course of these negotiations the Union renewed its request of 1952 for the names, classification, rates and hours of the employees covered by the contract. It urged that the information was needed "for the intelligent and equitable administration of the Agreement" as well as for the negotiations then at hand. Respondent again refused. During the course of the wage negotiations in the following 3 months, including the meetings of April 13 and April 24, the Union continued to press for this information, but respondent persisted in its refusal to reveal the names and wages and hours (R. 28, 58; 20, 22, 82–88, 102).

On April 30, 1953, the Union notified respondent that it had accepted respondent's offer of March 13 to

increase the basic minimum wage $1 per week (R. 27, 58; 20, 21, 99). A few days later, on May 5, 1953, the Union by letter reiterated its request for the payroll information, but respondent again failed to reply (R. 28; 22, 87, 102). On June 18, 1953, the Union filed the charge in this case with the Board, alleging, among other things, that respondent violated Section 8 (a) (5) and (1) by rejecting the Union's request for this payroll information.

II. The Board's conclusions and order

The Board concluded that whether the Union's request for payroll information be considered as relating to the pending negotiations for a general wage adjustment or as relating to the administration of the parties' collective bargaining agreement, respondent violated Section 8 (a) (5) and (1) of the Act by refusing to comply with the request (R. 58–59).[3]

Accordingly, the Board ordered respondent to cease and desist from the unfair labor practice found and affirmatively to furnish the Union, upon request, the name, classification, hours worked, and wage rate of each employee in the appropriate unit, and to post the usual notices (R. 63–64).

---

[3] The Board, by a vote of 3–2, dismissed as unsupported that portion of the complaint charging that respondent had further violated Section 8 (a) (5) and (1) by dealing directly with the individual employees on the question whether the payroll information should be disclosed and by instigating and sponsoring among its employees a union-shop deauthorization petition in derogation of the Union's exclusive collective bargaining status (R. 59–63, 65–67).

ARGUMENT

Respondent, by refusing to reveal to its employees' statutory bargaining representative the names, hours, and wages of the employees covered by its collective bargaining contract, violated Section 8 (a) (5) and (1) of the Act

Briefly stated, the Board's order in this case rests on the proposition that the Union, as the representative designated under the Act to serve as exclusive agent for all employees in the appropriate unit "for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment" (Section 9 (a)), is entitled to know the names, the rates of pay, the wages, and the hours of the employees for whom it alone may act. It is the Board's view that respondent's obligation to recognize and to deal with the Union as the exclusive representative of these employees in matters affecting wages and hours clearly implies that it must, upon request, make available all details relevant to their wages and hours about which it must confer. Hence, the Board concludes, withholding of wage and hour information specifying the existing wage and hour structure and the going rates of these employees, all relevant to wage-hour discussions, violates Section 8 (a) (5) and (1) of the Act.

This proposition has been endorsed without qualification by every court which has had occasion to consider it. *N. L. R. B.* v. *Whitin Machine Works,* 217 F. 2d 593, 594 (C. A. 4);[4] *N. L. R. B.* v. *Leland-Gifford Co.,* 200 F. 2d 620, 624 (C. A. 1); *N. L. R. B.* v. *Yawman & Erbe Mfg. Co.,* 187 F. 2d 947, 949

[4] A petition for certiorari was filed in the *Whitin* case on March 7, 1955, and will presumably be passed on during the current term.

(C. A. 2); *N. L. R. B.* v. *Hekman Furniture Co.*, 207 F. 2d 561, 562 (C. A. 6); *N. L. R. B.* v. *J. H. Allison & Co.*, 165 F. 2d 766 (C. A. 6), certiorari denied, 335 U. S. 814; *Aluminum Ore Co.* v. *N. L. R. B.*, 131 F. 2d 485, 487 (C. A. 7). See also *N. L. R. B.* v. *Jacobs Mfg. Co.*, 196 F. 2d 680, 684 (C. A. 2); *N. L. R. B.* v. *New Britain Machine Co.*, 210 F. 2d 61, 62 (C. A. 2); *N. L. R. B.* v. *Otis Elevator Co.*, 208 F. 2d 176 (C. A. 2).[5]

In *Yawman & Erbe, supra,* 187 F. 2d at 948, the employer's refusal to supply "a list of all employees together with their current salaries" was held violative of the Act. In *Leland-Gifford, supra,* 200 F. 2d at 624, the court observed that the employer "is required to give the Union data as to the wages paid to the individual 'employees' in the unit." In *Hekman, supra,* 207 F. 2d at 562, the court held that the Board "properly directed respondent to furnish to the complaining union the data demanded concerning individual wage rates, wage ranges, and individual job classifications." Summarizing these holdings the Fourth Circuit stated in *Whitin, supra,* 217 F. 2d at 594: "It is well settled that it is an unfair labor practice within the meaning of Section 8 (a) (5) of the Act for an employer to refuse to furnish a bargaining union a list of the employees represented

[5] *N. L. R. B.* v. *Boston Herald-Traveler Corp.*, 210 F. 2d 134, 136–137 (C. A. 1), is not to the contrary. In that case the court recognized that the Board could have validly ordered the employer to furnish the union with the individual salaries of the employees but it felt that the Board's order did not clearly so require and concluded that ambiguities in the order should be resolved against the Board which drafted it.

by it together with the wages paid them as such information is necessary to the proper discharge of the duties of the bargaining agent."

Characterizing this settled view of the law as "based solely on judicial ukase" (R. 77), respondent advances here contentions substantially the same as those which the courts rejected in the cases cited above. We turn to a consideration of these contentions.

A. The claim that respondent was under no obligation to engage in any negotiations as to which the requested data could be relevant

Respondent claimed before the Board that the Union was not entitled to information as to the wage rates of the employees because, according to respondent's interpretation of the contract, the wage provisions were not open for negotiation at the time that the request was made. In support of this position, respondent argues that the wage adjustment provisions in Section 21 (b) of the contract, which provided the basis for the negotiations for which the information was desired, provided merely for a mechanical adjustment of the minimum rates based upon a simple mathematical formula and that, accordingly, there was nothing in the nature of wages which it was obligated to discuss. Respondent's position appears to be that it agreed to the wage negotiations actually conducted not as a matter of right, but as a matter of grace (R. 29, 58; 86–87).

This argument is based upon a novel interpretation of the contract, contrary to the plain meaning of the reopener provision. The clause in question reads as follows:

> Section 21. * * *
>
> (b) Cost of Living Adjustment—On March 7, 1953, the basic minimum wage rates only as contained in Section 5, subsections (a) and (b) of this agreement shall be adjusted percentagewise to *at least* the percent of change in the National BLS Index during the period of February 1, 1952 and February 1, 1953.
>
> Example: Assume that the "new" Consumers Price Index of the Bureau of Labor Statistics increases five per cent (5%) in the specified period the said hourly rates of pay shall be increased *no less* than five per cent (5%). *A larger adjustment* in the [minimum] hourly rates may be made by mutual agreement between the parties. [R. 14–15, emphasis supplied.]

Read literally, this provision insures an adjustment of *"at least"* the percent of change shown in the B. L. S. Index. The "example" expressly states that "no less" than the percent of change in the B. L. S. Index shall be given, but that "a larger adjustment" in the hourly rate may be made "by mutual agreement between the parties." This obviously contemplates negotiation. The Union's request for negotiations was made pursuant to this provision. The parties did in fact undertake negotiations in consequence of this request. The adjustment finally agreed upon was almost twice that which was "at least" required. Under these circumstances, the Board could reasonably find that the Union requested the wage data for its use in negotiations conducted pursuant to the contract. (R. 58; 15–21, 83–87.)

Any suggestion that the wage-hour information may not have been relevant to these negotiations has been answered time after time by the various courts dealing with the problem. The Second Circuit disposed of an identical contention in the *Yawman* case, *supra,* 187 F. 2d at 949, with the following observation:

> * * * we find it difficult to conceive a case in which current or immediately past wage rates would not be relevant during negotiations for a minimum wage scale or for increased wages.
>
> Since the employer has an affirmative statutory duty to supply relevant wage data, his refusal to do so is not justified by the Union's failure to show the relevance of the requested information. The rule governing disclosure of data of this kind is not unlike that prevailing in discovery procedure under modern codes. There the information must be disclosed unless it plainly appears irrelevant. [Footnote omitted.] Any less lenient rule in labor disputes would greatly hamper the bargaining process, for it is virtually impossible to tell in advance whether the requested data will be relevant except in those infrequent instances in which the inquiry is patently outside the bargaining issue.

In the *Whitin* case, *supra,* 217 F. 2d at 594, in addressing itself to the same point, the court concluded that the bargaining representative "was entitled to information which would enable it to properly and understandingly perform its duties as such in the general course of bargaining and * * * such information should not necessarily be limited to that which

would be pertinent to a particular existing controversy."

In this case, when the Union assumed its representational responsibility on behalf of respondent's employees in March 1951, it had little, if any, knowledge of respondent's wage classification system, its rate structure, or its going rates (R. 102). A year later when it commenced negotiations for its first contract, its fund of knowledge on this score was no less meager. Understandably, the Union needed and asked for the wage-hour information. Respondent chose not to accommodate it. As a result, when the Union opened negotiations in January 1953, for the cost-of-living basic minimum rate adjustment, it had no basis for knowing whether the going rates were actually in excess of the minimum rate about which it was to bargain. It lacked the means to determine the practical effect of the minimum B. L. S. adjustment on the take-home pay of the employees whom it represented. Conceivably, the bulk of the wages may have been in excess of the basic minimum, so that the B. L. S. adjustment required by the contract would have been meaningless. In that event the Union would probably have felt an obligation to press for a larger adjustment than that which it actually requested, and might well have refused the amount offered by respondent as academic or insignificant (R. 81, 83–88).

Since the information was not furnished to the Union, no one can determine precisely what effect disclosure would have had on the negotiations, but it is undeniable that it was reasonably available from

respondent's records and may have been useful in enabling the bargaining agent to gauge the extent of its obligations to its constituents. It is for these reasons that the courts have agreed with the Board that, upon proper request, an employer negotiating wages with a collective bargaining agent, must furnish full data on individual salaries without specification of utility or pertinence. *Leland-Gifford, supra,* 200 F. 2d at 624; *Hekman Furniture, supra,* 207 F. 2d 561; *Aluminum Ore, supra,* 131 F. 2d at 487.

B. The claim that the information was not relevant to the administration of the contract

Respondent also challenges the Board's finding that the requested payroll information had general relevance to the administration of the collective bargaining agreement.

In this connection, it argued before the Board that the Union surrendered whatever interest it may have had in respondent's wage and hour practices when it agreed to the management prerogative clause, authorizing respondent to establish incentive or bonus systems and to adjust wage rates above the minimum without consultation. Its position is that the Union thus "bargained iself out of position to inquire into the wage rates during the life of the contract" (R. 31, 35).

> The clause upon which respondent relies provides:
>
> Section 17. Management Functions. The management of the store and the direction of the store personnel, including but not limited to, the right to hire, suspend, layoff, dismiss, discipline, transfer, promote, or the establish-

> ment of working schedules, training methods and the assignment of employees to jobs, to adopt or remove incentive or bonus systems, to adjust wage rates above those contained in this agreement, and other management functions not specifically mentioned herein, are exclusive responsibilities of the Employer (R. 13).

Respondent suggests that what this clause really means is that the Union waives its right to inquire into or question any of the employer's actions with respect to wages, whether arbitrary, inequitable, mistaken, or even discriminatory with respect to union membership or other concerted activities protected by the Act.[6] Respondent claims that the Union has bargained away the sum total of its interest in such affairs by agreeing that respondent may set wages above the minimum without negotiation.

Nothing in the language of the contract or in the record supports this view.[7] The clause in question does nothing more than to dispense with bargaining over the establishment of the wage standards. The Union manifestly retained a large and vital interest

[6] It concedes, of course, that the Union retained the right to question whether or not the employees were being paid at least the basic minimum rate.

[7] It should be noted that a waiver of a statutory right will not be inferred but must be "clear and unmistakable." *Tide Water Associated Oil Co.*, 85 N. L. R. B. 1096, 1098; *General Controls Co.*, 88 N. L. R. B. 1341, 1343; *California Portland Cement Co.*, 101 N. L. R. B. 1436, 1439; cf. *McQuay Norris Mfg. Co.* v. *N. L. R. B.*, 116 F. 2d 748, 751 (C. A. 7), certiorari denied, 313 U. S. 565; *New Britain*, *supra*, 210 F. 2d at 62; *Allison*, *supra*, 165 F. 2d at 768. This doctrine applies with particular force to the waiver claim here where the abdication of statutory representational responsibilities on wage-hour matters, which respondent attempts to infer, is so repugnant to the aims and purposes of the statute.

in what the wage system was, how it had been established, how it was applied, how it was changed or adjusted.

The Union's concern over possible inequities and its need for wage information may have been even greater here than in the ordinary case because the contract yielded to the respondent the sole discretion and responsibility for the fixing of wage rates above the minimum and for the establishment of all other wage details without limitation and without reference to any prescribed rate ranges or standard. The higher the degree of the employer's discretion, the greater the union's responsibility as the bargaining representative to obtain full information to protect the rights of its constituents in the administration of the contract. Otherwise, the unavailability of the information might serve to cloak distinctions between employees upon the basis of union activities.[8] Nor is this limited type of discrimination the only basis upon which the Union may have an interest in the wage system. It has a decided interest in protecting the employees whom it represents from unfair or inequitable wage distinctions, based upon mistake, favoritism, hostility, or any other discriminatory motivation which might constitute a grievable matter.

In any event, the Union required the wage-hour information in order to determine whether the wage system established by the contract operated well enough to justify the Union in continuing in future

[8] Section 3 of the contract provides that there shall be no discrimination because of membership or nonmembership in the Union (R. 8–9).

contracts to waive its right to bargain over wage adjustments above the minimum.

It follows that the Board was clearly reasonable in concluding that the data requested by the Union was relevant to the Union's role in administering the collective bargaining agreement, so that respondent's refusal to furnish the data violated Section 8 (a) (5) and (1) of the Act. Cf. *Leland-Gifford, supra,* 200 F. 2d at 624.

C. The claim that the contract grievance procedure prescribes the exclusive method for settling the dispute over the refusal to furnish payroll information

Before the Board respondent claimed that the grievance and arbitration provisions of the 1952 contract provided the exclusive method for the redress of unfair labor practice charges such as this one and that, accordingly, the Union's only recourse with respect to the dispute over the wage-hour information was to process the matter through the grievance procedure (R. 33–37).[9]

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[9] Section 19 of the contract provides as follows: "Section 19. Disputes. When a dispute arises as to the correct interpretation or application of any provision of this agreement, it shall be referred to a representative of the Union and the store manager. These two, after investigation, shall attempt to settle such disputes. In the event these two cannot agree, they shall jointly request the Federal Mediation and Conciliation Service to submit a panel of five (5) arbiters, one of which shall be selected by the process of elimination. Then the dispute shall be reduced to writing and submitted to the arbiter who shall decide the matter. The decision of the arbiter, within the scope of the submission, shall be final and binding on the parties hereto. The expense of any proceeding provided for herein shall be borne equally by the Employer and the Union." R. 14.)

The wage-hour information dispute was not a disagreement over the interpretation of a contract clause, as in *N. L. R. B.* v. *The Standard Oil Company,* 196 F. 2d 892 (C. A. 6).[10] Rather, as in *N. L. R. B.* v. *Hekman Furniture Co.,* 207 F. 2d 561, 562 (C. A. 6), it was a disagreement over the interpretation of the statute. In no sense would it fall within the contract grievance procedure, which covered disputes "as to correct interpretation or application of any provision of this Agreement." Moreover, Section 10 (a) of the Act provides that the power of the Board to prevent the commission of unfair labor practices "shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement . . ." The Board therefore properly rejected the contention that the grievance procedure set up by the contract afforded the only means by which the Union could assert its statutory right to the wage data.

D. The claim that the information was in the possession of the Union

Respondent contends, in final justification for its refusal to honor the Union's request, that this information "was in the possession of the Union." In taking this position before the Board, respondent seemed to rely upon the fact that, at the conclusion

[10] Insofar as respondent's position may be that the contract grievance procedure was intended to cover all disputes of any kind between the parties, regardless of the Union's statutory rights, the Board properly rejected it. Such a broad claim of waiver cannot conceivably find justification on the basis of a contract clause providing for settlement through the grievance procedure of "a dispute . . . as to the correct interpretation or application of any provision of this Agreement" (R. 14).

of the 1952 contract negotiations, respondent furnished to the Union a list of all employees in the unit and thereafter supplied the Union with a copy of the union-security notice acknowledged by each new employee as he was hired. In no instance, however, did it furnish the wage and hour material requested by the Union (R. 31–32; 23, 89–92).

The furnishing of the names in 1952 served the purpose of facilitating the administration of the union-security clause of the contract,[11] requiring new employees to join the Union within 31 days after employment. This material in no sense touched upon any detail of the wage system, rate range, going rates, incentive or bonus plan, hours or any similar wage-hour information (R. 31–32).

The apparent direction of this contention is that the bargaining representative could have asked the employees for whatever wage and hour information they may have had. However, the record is barren of suggestion that the employees, individually or collectively, had knowledge of the detailed wage-hour information to which the Union was entitled and

[11] Following is Section 2 of the Agreement: "Section 2. Union Membership. The Employer may select and employ without restriction; however, all new employees who are covered by this agreement shall become members of the Union within thirty-one (31) days from hiring in date. All employees covered by this Agreement who are now members or who become members of the Union shall maintain membership in the Union as a condition of continued employment, subject to the provisions of the Labor-Management Relations Act, 1947" (R. 8).

which it requested. Each employee, assuming that he understood the various deductions for tax purposes, may have known the amount of wages paid to him, but it does not appear that any employee was familar with the wage-hour structure generally prevailing in the unit. Indeed, there is no basis for inferring that all of the employees would have cooperated in this respect. Not all of the employees were members. Some were hostile (R. 31).[12] Obviously, on this record, the employees would be an unreliable and unsatisfactory source for the kind of information which the bargaining representative requires "to enable it to properly and understandingly perform its duties." *N. L. R. B.* v. *Whitin Machine Works, supra,* 217 F. 2d at p. 594. Cf. *Brooks* v. *N. L. R. B.,* 348 U. S. 96, 103; *J. I. Case Co.* v. *N. L. R. B.,* 321 U. S. 332, 338–339.

In any event, the bargaining representative is not required to gather this data from the individual employees it represents. In all the cases in which this point has been raised the courts have held without exception that the bargaining representative is entitled, upon appropriate request, to have such data, where relevant, from the only authoritative source from which it can be obtained—the employer's records. *N. L. R. B.* v. *Yawman & Erbe Mfg. Co., supra; N. L. R. B.* v. *Hekman Furniture Co., supra;*

[12] The union-security clause of the contract did not cover employees not members of the Union on the effective date of the contract. Wages paid to the employees opposing it may have been of interest to the Union.

N. L. R. B. v. *J. H. Allison & Co., supra; Aluminum Ore Co.* v. *N. L. R. B., supra.*[13]

It follows that the Board properly ordered respondent to furnish to the Union the information which it was entitled to have in its representational capacity.

CONCLUSION

For the reasons stated above, the Board's order should be enforced.

Respectfully submitted.

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[13] See the following: *Yawman*, 89 N. L. R. B. at p. 890; *Hekman*, 101 N. L. R. B. at p. 640; *Allison*, 70 N. L. R. B. at p. 385; *Aluminum Ore*, 39 N. L. R. B. at p. 1296.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Secs. 151, *et seq.*), are as follows:

Rights of Employees

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3).

Unfair Labor Practices

Sec. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

* * * * *

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the rep-

resentative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: * * *

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: * * *

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: * * *

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